

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/13/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000192

FILED: \_\_\_\_\_

STATE OF ARIZONA

SHANNON D ANDERSON

v.

WILLIAM JACK TOLMACHOFF

REED WARREN KING

GLENDALE CITY COURT  
REMAND DESK CR-CCC  
JUDGE JOHN BURKHOLDER  
GLENDALE CITY COURT  
5711 W GLENDALE AVE  
GLENDALE AZ 85301

MINUTE ENTRY

GLENDALE CITY COURT

Cit. No. 225678

Charge: 1. PERMITS REQUIRED  
2. ILLEGAL LAND USE  
3. LIMITATIONS OF NONCONFORMING BUILDINGS AND  
USES

DOB: 11-29-1964

DOC: 11-22-2000

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since hearing oral argument on August 13, 2001. The Court has considered counsels' arguments, memoranda, and the record of the proceedings from the Glendale City Court.

Appellant was charged by complaint with three civil zoning violations alleged to have occurred on November 22, 2000, within the city of Glendale, at 5726 North 75<sup>th</sup> Avenue. This location is also the location of Appellant's family farm. The parties stipulated to most of the issues in this case and submitted the matter to the Honorable John Burkholder, Glendale City Court judge. The stipulated facts included the following:

- 1) Tolmachoff family owned and operated the Farm located at 5726 North 75<sup>th</sup> Avenue prior to the City of Glendale's annexation of the area.
- 2) City of Glendale annexed the area in December of 1983 and placed its R1-6 (single residence) designation on top of County's R1-6 (single residence) designation.
- 3) The property is currently operated as a farm under the legal non-conforming use (agricultural) designation.
- 4) Defendant (the Appellant herein) did not get permits from the City for the staircase/platform structure leading into the Corn Maze, its wiring/lighting and wiring/lighting for the parking lot in front of the Corn Maze—all located at 5726

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North 75<sup>th</sup> Avenue, Glendale, Arizona, from  
October 19, 2000 through November 22,  
2000.

5) Defendant, between October 19, 2000  
through November 22, 2000, operated,  
advertised and charged admission for entry  
into the Corn Maze which was located at  
5726 North 75th Avenue, Glendale,  
Arizona.<sup>1</sup>

The only issues presented by the parties to this Court for review is whether the trial judge erred in finding that " the Corn Maze is...an expansion of the traditional farming or agricultural use of land to generate more money for the farmer."<sup>2</sup> The trial court proceeded to find Appellant responsible for all three charges and subsequently entered civil sanctions of \$250.00 for each of the three counts. Appellant filed a timely Notice of Appeal in this case.

Both parties agree, and the trial court found, that the Tolmachoff property at issue may be used for agricultural purposes as a legal non-conforming use of the property. Though the property is currently designated R1-6 as a single-residence designation, the property has been continuously used for agricultural purposes since before that designation was imposed upon that property. Appellee cites City of Glendale Ordinance No. 1.402 which provides that legal non-conforming uses may continue only in the manner, and to the extent that they existed at the time of the annexation. That same ordinance also provides that no expansion shall be made of those non-conforming uses unless such expansions conform to the regulation specified for the particular district in which the property is located.

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<sup>1</sup> Stipulation of facts, record of proceedings from the Glendale City Court.

<sup>2</sup> March 12, 2001, findings and determination by Judge John D. Burkholder, at 2, record of the proceedings from the Glendale City Court.

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In *Blake v. City of Phoenix*,<sup>3</sup> the Court of Appeals sustained a Board of Adjustment ruling upholding the City of Phoenix Zoning Administrator which found an expansion and illegal use of non-conforming property. In *Blake*, the Court found that the Blakes had purchased their nursery property in 1986. Prior to 1986 the property had been zoned residential, but the property had been operated from 1959 to 1981 as a nursery for orchids and other similar plants. The property contained several greenhouses, but after the Blake's purchased the property they expanded the operations from a greenhouse to a nursery which covered the entire property. The Court found the nature and extent of the property as well as the increased traffic changed the character of the property. The Court noted that the property was originally used to grow orchids and other plants in only three greenhouses for wholesale purposes, but now the property was expanded to include extensive retails sales of outdoor plants brought on to the site. The Court of Appeals cited the Phoenix Zoning Ordinance which is virtually identical to Glendale's ordinance previously cited (Ordinance 1.402).

In this case, as the trial judge noted, Appellants opened a cornfield to the public between October 19, 2000, and November 22, 2000. The cornfield had been planted for corn in the summer of 2000. Appellants created a maze in the shape of a tractor within the cornfield. Appellants charged admission to enter this corn maze. The trial judge concluded that the corn maze was an expansion of the traditional farm or agricultural uses of the Tolmachoff property:

A corn maze is not a natural by-product of seeds or plants such as tomatoes, onions, ears of corn, lettuce, or watermelon. Rather, it is manual or mechanical removal of cornstalks to create a maze which results in a quasi-agricultural or secondary use of a crop. To put it more directly, it is simply an entrepreneur's means of making

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<sup>3</sup> 157 Ariz. 93, 754 P.2d 1368 (App. 1988).

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more money from the same crop. Corn grown for feed can be either sold as feed or used to feed one's own animals. This generates "x" amount of money or saves the farmer the cost of buying feed. By creating the maze in the cornfields, he can generate extra gross income which would not otherwise be available if the corn was grown exclusively for feed. The example, if ten thousand people paid a \$5.00 admission to the maze, that is an additional \$50,000.00 gross income that the farmer would not have if the cornfield was used exclusively for feed.<sup>4</sup>

This Court finds substantial and convincing evidence in the record to support the trial court's determination that Appellant's corn maze extended the agricultural non-conforming use of his property. It is clear that the purpose of the corn maze was primarily entertainment, not agricultural. As such, this was an impermissible extension of the non-conforming use of the property at issue.

IT IS THEREFORE ORDERED affirming the findings and judgment of the trial court and the sanctions imposed.

IT IS FURTHER ORDERED remanding this matter back to the Glendale City Court for all future proceedings.

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<sup>4</sup> March 12, 2001, findings and determination by Judge John D Burkholder, at 2, record of proceedings from Glendale City Court.